

No. 23-1078

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

B.P.J., by next friend and mother, HEATHER JACKSON,
Plaintiffs-Appellants

v.

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON
COUNTY BOARD OF EDUCATION; WEST VIRGINIA SECONDARY
SCHOOL ACTIVITIES COMMISSION; W. CLAYTON BURCH, in his
official capacity as State Superintendent; DORA STUTLER, in her official
capacity as Harrison County Superintendent,
Defendants-Appellees,

and

THE STATE OF WEST VIRGINIA, LAINEY ARMISTEAD
Intervenors-Appellees.

On Appeal from the United States District Court
for the Southern District of West Virginia,
Case No. 2:21-cv-00316 (Goodwin, J.)

**MOTION OF 25 ATHLETIC OFFICIALS AND COACHES OF FEMALE
ATHLETES TO FILE BRIEF OF *AMICI CURIAE*
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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Pursuant to Federal Rule of Appellate Procedure 29(a), 25 athletic officials and coaches of female athletes move for leave to file an *amici curiae* brief in support of Appellees. The proposed brief accompanies this Motion.

Proposed *amici curiae* requested consent from the parties to file their brief of *amici curiae*. Counsel for Plaintiffs-Appellants; Defendants-Appellees West Virginia State Board of Education, Harrison County Board of Education, W. Clayton Burch, and Dora Stutler; and Intervenors-Appellees State of West Virginia and Lainey Armistead consented. Defendant-Appellee West Virginia Secondary School Activities Commission took no position on the filing of the brief. Accordingly, the undersigned file this motion seeking leave from the Court to file their brief of *amici curiae*.

I. Interest of Amici Curiae

Amici curiae consist of over two dozen athletic officials and coaches from nine different sports and 19 different states, writing on behalf of the girls and women they have coached and all female athletes and future athletes, whose futures hang in the balance between objective and subjective notions of “sex.” *Amici* have dedicated significant parts of their lives to the world of sport and ensuring that its safe, fair, and ethical bases are maintained. They represent a wide range of experience and perspectives, and include youth, high school, collegiate, club, professional, and Olympic coaches. They represent different sports, including track, swimming, soccer, gymnastics, archery, weightlifting, rowing, triathlon and tennis. *Amici* include both current and retired coaches from all around the country. What they have in common is that

they recognize the importance of a protected female category so that women and girls can have fairness, safety, and equal opportunities in their sports endeavors. A complete list of the *amici* coaches is included in the addendum attached hereto.

Fundamentally, the job of an athlete's coach—at every level, from youth sports to Olympic competitions—is to help the athlete reach his or her full potential in their chosen athletic endeavors, while keeping them as safe as possible and, ideally, increasing their love for the sport. It is *amici's* job to oversee the rules of competition, to develop athletes, and to defend athletes against ethical violations. *Amici* have seen and experienced first-hand that competing in and excelling at sports can produce incalculable benefits—physically, mentally, relationally, and socially—and coaches have the unique opportunity and responsibility to facilitate such opportunities.

Ensuring that female athletes are not forced to compete against biological males who self-identify as females is critical to each of those elements of a coach's role. Given the scientifically indisputable and biological differences between males and females, female athletes cannot reach their full competitive and athletic potential if they are required to compete against biological males. In many—perhaps most—sports, it is inherently less safe for female athletes to compete against biological males, and the competitive disadvantage to female athletes forced to compete against biological males has deleterious effect on the joy, self-worth, and confidence that female athletes

derive from their athletic participation. As such, *amici* have an interest in ensuring that the playing field for female athletes is as even as possible.

II. Desirability of a Brief from *Amici Curiae*

The attached brief provides the unique perspective of over two dozen officials and coaches of female athletes. The brief explains why women's officials and coaches have not been more vocal on this issue until now, their unique perspective on why H.B. 3293 is necessary to protect against the rollback of women's rights and their participation in sports to pre-Title IX levels, the significant benefits that athletic participation provides to girls and women that can only be achieved through single-sex sports, and first-hand experiences and observations relating to these issues. *Amici* believe the unique perspectives they offer in the brief may assist the Court in its deliberations by providing first-hand accounts of the stakes involved for women's sports and women's rights more broadly.

Conclusion

For the foregoing reasons, *amici* respectfully ask the Court to grant their motion for leave to file a brief of *amici curiae*.

Dated: May 3, 2023

Respectfully submitted,

/s/ Anna St. John

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Addendum

Amici Curiae Athletic Officials and Coaches of Female Athletes

<p><i>Jack Bauerle</i> Division I Collegiate Swim Coach Lifetime Achievement Award, College Swimming & Diving Coaches Association of America</p>	<p><i>Frank Busch</i> Former National Team Director of USA Swimming (5-time Olympic Coach)</p>
<p><i>Brittany Campanello</i> Youth Soccer Coach, Collegiate Athlete</p>	<p><i>Heather Cartwright</i> Former NCAA Division I Rowing Coach</p>
<p><i>Tom Coffey</i> AAU women and girls track coach 1969-1972 California interscholastic track coach 1973-2003</p>	<p><i>Catherine Curtis</i> Archery Coach</p>
<p><i>Sonni Dyer</i> Division I Collegiate Head Coach & Director of Triathlon</p>	<p><i>Bob Ernst</i> Division I College Rowing Coach, Men's & Women's teams, 50 years US National Team and Olympic Team Coach, 20 years</p>
<p><i>Elizabeth Farrington</i> Club and Youth Soccer Coach, Collegiate Scholarship Athlete</p>	<p><i>Kathleen A. Gill</i> Collegiate Scholarship Athlete in Tennis, University of Kentucky Former High School Athletic Director, Former Tennis and Volleyball Coach</p>
<p><i>Destani Hobbs</i> Former USA Weightlifting Level 1 Coach Former USA Weightlifting Affiliated Member/Athlete</p>	<p><i>Mary Horan Hollingsworth</i> Coach</p>

<p><i>Vicki Huber-Rudawsky</i> 8x NCAA Champion in Track and Cross-Country 2x Olympian, 4th at World Cross-Country Championships Delaware State High School Champion and Record Holder for 25 years High School Track Coach</p>	<p><i>Patti Hupp</i> USATF Level 2 Certified Track and Field Coach USTFCCA Technical Certified Coach, ALTIS Certified Coach</p>
<p><i>Seth Huston</i> NCAA Division I College Swim Coach</p>	<p><i>Jim Livengood</i> Retired Division I Athletic Director - Washington State, University of Arizona, UNLV</p>
<p><i>Cynthia Millen</i> Former NCAA Swim Official, Former USA Swimming National Official Former International Paralympic Swim Official</p>	<p><i>Dennis Pursley</i> 5x Olympic Coach American Swimming Coaches Association Hall of Fame</p>
<p><i>Lisa Larsen Rainsberger</i> Founder of Kokopelli Kids Racing Team and Head Coach Coronado High School Head Cross Country and Track Coach 1985 Boston Marathon Champion; Former 5 Mile, 15k, 10 Mile, 30k American Record Holder University of Michigan 3 Sport All-American: Track and Field, Swimming and Cross Country</p>	<p><i>Meredith Gordon Remigino</i> Former USATF Certified Level 1 Track & Field Coach and Apprentice Level Official Former Connecticut State Department of Education - Certified Coach NCAA Division I Varsity Women's Cross Country and Track & Field Athlete, Yale University Connecticut High School State Cross Country Champion (1986)</p>

<i>Jode Osborn Ritsema</i> Former Division I Soccer Player and Assistant Coach Girls High School Soccer Coach, High School Hall of Fame Athlete	<i>Bronwyn Sims</i> Athlete, Girls and Women's Gymnastics Coach
<i>Dawn Templeton</i> Track Coach, Collegiate Scholarship Athlete	<i>Gregg Troy</i> US Olympic Team Head Swim Coach USA Swimming Coach of the Year High School and Division I Collegiate Swim Coach
<i>Sara Younger-Merrill</i> US Rowing Level II Coach US Rowing Assistant Referee and Masters Athlete	

Proof of Service

I hereby certify that on May 3, 2023, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Fourth Circuit using the CM/ECF system, thereby effecting service on counsel of record who are registered for electronic filing.

Executed on May 3, 2023.

/s/ Anna St. John

Anna St. John